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Part V

Environmental Protection Agency

40 CFR Part 51

Inspection/Maintenance Flexibility Amendments (Ozone Transport Region); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5541–3]

RIN 2060–AG11

Inspection/Maintenance Flexibility Amendments (Ozone Transport Region)

AGENCY: Environmental Protection Agency.

ACTION: Supplemental final rule.

SUMMARY: Today's action revises the motor vehicle Inspection/Maintenance (I/M) requirements by adding a special low enhanced performance standard for qualified areas in Ozone Transport Regions (OTR). This additional performance standard applies to certain attainment, marginal and moderate areas in the OTR. The purpose of this action is to allow OTR qualifying areas the flexibility to implement a broader range of I/M programs than is currently permitted.

EFFECTIVE DATE: This rule will take effect on September 23, 1996.

ADDRESSES: Materials relevant to this rulemaking are contained in the Public Docket No. A–95–08. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW, Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 5:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material. Electronic copies of the preamble and the regulatory text of this rulemaking are available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTN BBS) and the Office of Mobile Sources' World Wide Web cite, http://www.epa.gov/OMSWWW/.

FOR FURTHER INFORMATION CONTACT: Leila Cook, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (313) 741–7820.

SUPPLEMENTARY INFORMATION:

II. Summary of Rule

Under the Clean Air Act as amended in 1990 (the Act), 42 U.S.C.7 401 *et seq.*, the U.S. Environmental Protection Agency (EPA) published in the Federal Register on November 5, 1992 (40 CFR part 51, subpart S) rules related to plans for Motor Vehicle Inspection and Maintenance (I/M) programs (hereafter referred to as the I/M rule; see 57 FR 52950). Today, EPA is revising this rule to provide greater flexibility to certain Ozone Transport Region (OTR) areas.

Section 182 of the Act is prescriptive regarding the various elements that are required as part of an enhanced Inspection/Maintenance (I/M) performance standard. It also provides states with flexibility in meeting the numerical performance standards for enhanced or basic I/M programs. States in the Ozone Transport Region (OTR) requested additional flexibility in implementing I/M in areas which are in attainment, which are areas designated and classified as marginal ozone areas, or which are designated and classified as moderate ozone areas under 200,000 in population. These three types of areas would be exempt from all I/M requirements but for their location in the OTR. These areas are included in the OTR enhanced I/M requirements to help achieve overall attainment and maintenance goals for the region, which includes serious and severe ozone nonattainment areas.

With today's action, EPA is establishing an additional enhanced I/M performance standard for qualified areas in the Northeast OTR, hereafter referred to as the OTR low enhanced performance standard. The emission reduction targets for this program are less than both the low enhanced performance standard and the basic performance standard. There are two qualifications to be eligible for the OTR low enhanced performance standard. First, the standard applies only in attainment areas, marginal ozone nonattainment areas and certain moderate ozone nonattainment areas under 200,000 in an OTR. Moderate areas of that size that were not previously required to, or had not in fact, implemented a basic I/M program under the pre-1990 Act can take advantage of the OTR low enhanced performance standard. The savings clause in section 182(a)(2)(B)(i) requires areas that had or were required to have I/M programs before 1990 to retain programs of at least that stringency. Because, as explained below, EPA believes the Act requires an enhanced I/M program to be an enhancement over otherwise applicable I/M requirements, areas subject to basic I/M or the savings clause cannot adopt a less stringent program. Any moderate area with urbanized areas having a total population of over 200,000 would also be required to implement basic I/M under section 182(b)(4) and therefore is ineligible for the OTR low enhanced performance standard. Second, the OTR low enhanced program must be supplemented by other measures in order to achieve emission reductions equal to or greater than that which would have occurred had a regular low enhanced I/M program been implemented (as defined by 40 CFR 51.351(g), see 60 FR 48029). This is because the primary goal of the Act in establishing the OTR provisions and requiring enhanced I/M in areas with a population of 100,000 or more in the OTR was to contribute to regional attainment. EPA believes that an area should be able to qualify for the additional flexibility provided under the OTR low enhanced standard only if it achieves, in some other way, the additional reductions that the otherwise applicable low enhanced I/M program would achieve. Thus, the total emission reductions from the OTR low enhanced I/M program plus the additional measures must equal the tonnage reduction that a regular low enhanced program would have generated. However, since local reductions are not the crucial factor, a state may bubble surplus reductions from other areas not required to implement I/M in the state. For example, a state could implement a statewide reformulated gasoline (RFG) program plus an OTR low enhanced I/M program in subject areas or statewide and potentially achieve comparable reductions to a regular low enhanced program because of the additional reductions RFG would achieve in areas not otherwise required to have RFG. Equality of emission reductions must be demonstrated over a time period which aligns with the attainment deadlines of all OTR areas: from 2000 through 2007. Note that an I/M program that meets the OTR low enhanced performance standard must be implemented even if other measures could achieve comparable emission reductions because the Act specifically

requires an enhanced I/M program in metropolitan areas with 100,000 population in the OTR. Also, measures to fill the gap between OTR low and regular low enhanced I/M may not be otherwise required by the Clean Air Act.

The OTR low enhanced performance standard model program is composed of the following elements: Annual testing of 1968 and newer light duty vehicles and light duty trucks, OBD checks for 1996 and newer vehicles, remote sensing of 1968–1995 vehicles, catalyst checks on 1975 and newer vehicles, and PCV valve checks on pre-1975 vehicles. These elements collectively satisfy the Act's requirements for an enhanced I/M program performance standard. As with other performance standards, EPA does not necessarily recommend implementing this particular program but rather encourages states to design a program that will achieve equal or greater emission reductions than the performance standard while providing for the specific needs of the area.

In the proposal, EPA noted that the emission reduction targets generated by this model program could not yet be precisely modeled but EPA estimated the targets to be less than those for the basic I/M program standard (which are approximately 6.3% for HC, 10.8% for CO, and 0.7% for NO_X). EPA expects to issue draft guidance on remote sensing credits in the Summer of 1996. As soon as a final guidance is issued, an analysis of the emission reduction targets generated by this model program will be placed in the docket. Even though the estimated emission reduction targets for the OTR low enhanced standard are less than those for basic I/M, EPA believes this standard meets the requirement of the Act for ''enhanced'' I/M. There are two important facts to consider in this regard: first, neither the Act nor the legislative history specifies that the emission reduction targets for enhanced I/M must be greater than basic in all cases. EPA believes the Act provides the agency latitude in establishing multiple performance standards to meet a wide range of state and local needs and conditions. Second, the areas eligible to take advantage of this performance standard were not required to nor did they implement I/M programs prior to 1990. So, in all cases, this standard establishes a program target that is indeed enhanced relative to what was present or required for the area before enactment of the 1990 Clean Air Act Amendments or is otherwise required after the 1990 Clean Air Act Amendments. EPA did not receive any public comments disagreeing with this legal interpretation.

As is the case with all performance standard model programs, EPA does not necessarily recommend implementation of the model program, since it is constrained in composition by law (e.g., EPA recommends not testing cars until they reach 4 years of age and recommends biennial testing as more cost-effective; by contrast, all of the enhanced I/M performance standards are required by the Act to reflect a model program that includes annual testing of all vehicles). In that the emission reduction targets for the OTR low enhanced performance standard are below the basic level, the standard provides the broadest possible latitude in program design. For example, some states in the OTR have existing decentralized, safety inspection programs. Comprehensive visual checks of emission control devices, a gas cap pressure test, the Act-mandated OBD check, and the Act-mandated on-road testing could be added to these programs which should then meet the OTR low enhanced standard, as long as a proper enforcement mechanism was in place. Many other possibilities exist for program designs that could also meet this performance standard.

While the OTR low enhanced performance standard is less demanding than the existing performance standard applicable to the affected areas, today's action still ensures that enhanced I/M programs in these areas meet all statutory criteria for EPA approval. A state's OTR low enhanced program is required, under section 182(c)(3)(C) of the Clean Air Act, to include computerized analyzers and on-road testing devices; computerized equipment and on-road testing devices are required by the current rule and apply to the OTR low enhanced program. A state's OTR low enhanced program shall also include a regulatory framework for waivers, if waivers are to be issued, and an enforcement system through registration denial, (except for any program in operation before November 15, 1990 whose enforcement mechanism has been demonstrated to be more effective than registration denial). Today's amendments leave requirements in this regard the same as for other enhanced I/M areas. As mandated by the Act, in an OTR low enhanced program, vehicle emissions shall be tested annually unless biennial testing will equal or exceed the reductions that can be obtained from annual inspections. A program could combine biennial inspections on the vehicles equipped with on-board diagnostic computers (OBD) with biennial evaporative system checks to achieve the necessary additional reductions. The OTR low enhanced performance standard is based on centralized inspections of OBD-equipped vehicles and on-road remote sensing testing; EPA believes that this meets the specific requirement that the performance standard be based on centralized testing.

Today's action also establishes quality assurance requirements for OTR low enhanced I/M programs that are commensurate with the emission reductions which the programs are intended to achieve. In particular, current rules require enhanced I/M programs to be evaluated by conducting test-only IM240s on a random representative sample of the fleet (a minimum of 0.1%) to verify that the emission reductions are occurring. EPA believes that the emission reductions from an OTR low enhanced program are small enough that this level of effort is not justified. The routine quality assurance requirements of the original I/M rule are also not necessarily appropriate in light of the low level of benefits of the program.

This action also modifies the geographic exclusion rule for counties within Metropolitan Statistical Areas (MSAs) in the Ozone Transport Region. The modification allows states to exclude counties that comprise less than 1% of the population of the MSA from program coverage. Inclusion of such a small fraction of the population is not worth the significant cost of expanding geographic coverage of the program to include such a county.

This action requires that the implementation date for full testing in areas opting for the OTR low performance standard be no later than the latest date by which full testing can commence and still achieve sufficient reductions for all OTR areas to meet the performance standard by the Act's attainment and reasonable further progress deadlines, including the end of 1999 attainment date for serious ozone nonattainment areas. This will generally mean a start date no later than January 1, 1999, for annual testing programs, although EPA will accept field testing commencing as late as July 1, 1999 if the full I/M reductions can be achieved by the serious area attainment deadline. Note that the performance standard model program assumes a start date of January 1, 1999 because EPA believes Congress intended that the performance standard be based on at least one complete annual test cycle. With the requirement to offset the emissions difference between OTR low and regular low enhanced with other measures, this

date ensures that attainment in the region is not impaired.

Today's action also serves to provide other flexibilities to non-OTR states in designing quality assurance programs. The intent is to allow alternative quality assurance procedures that are as effective as or better than those specified in the original I/M rule.

III. Authority

Authority for the action proposed in this notice is granted to EPA by section 182 of the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*).

IV. Public Participation

A. Increased Flexibility

All the commenters agreed with EPA's effort to provide states with greater flexibility and almost all felt that the new OTR low enhanced performance standard was necessary to meet the unique needs of states within the Ozone Transport Region.

B. Clarification of 200,000 Population Requirement

1. Summary of Proposal

The proposal allowed attainment areas, marginal ozone nonattainment areas and moderate ozone nonattainment areas with a 1980 Census population of less than 200,000 in the urbanized area to use the new OTR low enhanced performance standard.

2. Summary of Comments

One commenter asked for clarification of how the 200,000 urbanized area population criteria would be applied. Specifically, the commenter asked whether the population criteria applied to urbanized areas within each Metropolitan Statistical Area (MSA) or urbanized areas within the entire attainment or non-attainment area.

3. Response to Comments

Within the OTR, enhanced I/M programs are required in MSA's with populations of 100,000 or more. However, the OTR, like the rest of the country, is also subject to the basic I/M requirements that an urbanized area with a population of 200,000 or more that is classified as moderate ozone nonattainment must implement a basic I/M program. Thus, moderate ozone areas in the OTR with an MSA population of greater than 100,000 but an urbanized area population of less than 200,000 are eligible for the OTR low enhanced performance standard. In contrast, moderate ozone areas with MSA populations of greater than 100,000 and urbanized area populations of greater than 200,000 must meet the basic performance standard. If a state within the OTR falls into this later category which has to implement a basic I/M program in the urbanized area (with a population of 200,000 or more) it can still implement an OTR low enhanced program in any portion of the MSA which falls into an urbanized area with a population of less than 200,000.

C. Duplicate Requirements

1. Summary of Proposal

The proposal did not exempt states that implement an OTR low enhanced performance program from most of the general requirements for enhanced I/M programs in the original I/M rule.

2. Summary of Comments

Two commenters addressed this issue. The first felt that the inclusion of on-road testing and OBD testing in the OTR low enhanced performance standard is duplicative of the on-road and OBD testing requirements in the original rule, 40 CFR 51.351 (b) and (c). The second commenter felt that several sections of the I/M rule dealing with data collection and data analysis and reporting, 40 CFR 51.365 and 51.366, should not be applicable to OTR low enhanced programs.

3. Response to Comments

The Clean Air Act requires OBD as part of any basic or enhanced performance standard. Additionally, RSD is required as part of any enhanced I/M performance standard. Section 51.351(b) requires that on-road testing of either 0.5% of the subject vehicle population or 20,000 vehicles (whichever is less) be included in any enhanced I/M performance standard. The OBD requirements were reserved by EPA in the original I/M rule and are expected to be published in 1996. EPA cautions commenters to remember that performance standards merely establish the minimum target a certain program must meet. They do not conclusively establish the elements of the program. Thus, the § 51.351(h)(6) establishment of RSD and OBD as the exhaust emission test types under the OTR low enhanced performance standard is not a duplication of §§ 51.351 (b) and (c) because these are separate standards which OTR low areas do not otherwise have to meet.

EPA agrees with the comment that certain portions of sections 51.365 and 51.366 regarding data collection, analysis and reporting are inapplicable to OTR low enhanced performance states. Certain ''high'' enhanced program elements, such as evaporative system checks, will not apply in an OTR low enhanced program. However, the Clean Air Act and the I/M rule require each state to report emissions reductions achieved, based on data collected during the inspection and repair of vehicles. Furthermore, depending on the program design which these areas elect to implement, varying types of data and reporting might or might not apply. Obviously a state cannot collect, analyze and report data which its program does not generate. Therefore, while the data collection and reporting requirements of sections 51.365 and 51.366 must still apply to OTR low enhanced areas, states need only submit program-applicable data and reports.

D. Emission Reduction Credits

1. Summary of Proposal

The preamble for the proposal acknowledged that EPA had not finalized emission reduction credits for the OTR low enhanced performance standard because EPA is still in the process of finalizing the credits for RSD. However, the preamble did note that EPA expected these benefits to be less than those achieved by the basic performance standard.

2. Summary of Comments

Several commenters noted that it is difficult for a state to finalize an OTR low enhanced program until EPA issues emission reduction credits for the program.

3. Response to Comments

EPA is preparing to issue a draft guidance on RSD credits in the Summer of 1996. After the draft guidance is issued, EPA will take public comments before issuing final guidance. While EPA cannot give a specific date by which final guidance will be issued, stakeholders can be assured that EPA realizes the importance of issuing RSD credits and is working to issue them as soon as possible.

E. Comparability of Basic Programs

1. In the proposal, EPA stated that the emission reductions from the new OTR low enhanced performance standard will actually be less than the emission reductions obtained from a basic I/M program. EPA noted that the Act in no way prohibits the creation of multiple enhanced performance standards to meet a wide variety of state and local needs and conditions. In fact, the Clean Air Act does not require emission reductions targets for enhanced I/M programs to be greater than those for basic programs. Furthermore, all the areas eligible to use the OTR low enhanced performance standard were

not required and did not implement I/M programs before 1990. Thus, the OTR low enhanced performance standard is an enhancement for these areas compared to what was required and present before the 1990 amendments to the Act.

2. Summary of Comments

One commenter believes that any existing basic program in an attainment or marginal non-attainment area should meet the OTR low enhanced performance standard. This commenter did not believe that existing programs should have to be supplemented to meet the new performance standard.

3. Response to Comments

From an emission reduction point of view, any existing basic program that meets the basic performance standard will also meet the emission reduction targets established by the OTR low enhanced performance standard. The only changes existing programs will have to make is to include any element which is required for an enhanced program which it currently does not include; for instance, OBD checks and 0.5% on-road testing.

F. Effectiveness of RSD

1. Summary of Rule

The performance standard created by today's action requires RSD testing of 1968 to 1995 vehicles beginning in 1999.

2. Summary of Comments

One commenter was very concerned that RSD testing will actually increase consumer inconvenience if RSD has a high false failure rate. If this is the case and the state requires retests for vehicles that fail the RSD test, many consumers may be needlessly required to go to a test station to get another emission test.

3. Response to Comments

The goal of this action is to increase flexibility to the states so that they can design an I/M program which they feel is most effective for their area and convenient for their citizens. This performance standard merely establishes the target level of emission reductions that an OTR low enhanced program must achieve and in no way mandates the type of test a state must implement. Thus, states concerned about false failures need not rely heavily on RSD testing. States may implement any type of test they choose so long as it meets the emission reduction target of the OTR low enhanced performance standard. The requirement to perform on-road testing on at least 0.5% of the fleet remains, although RSD is not required for this purpose.

G. Retests for RSD Failures

1. Summary of Proposal

The OTR low enhanced performance standard requires RSD testing of 1968–1995 vehicles with a carbon monoxide standard of 7.5%. A vehicle must have two separate readings above 7.5% to establish a failure thereby requiring a retest.

2. Summary of Comments

One commenter noted their opinion that RSD is useful at targeting vehicles with excess emissions but that RSD cannot substitute for a traditional tail-pipe exhaust test. Therefore, the commenter believed that RSD must be used in conjunction with a traditional exhaust emissions re-test.

3. Response to Comments

EPA agrees with this comment but again points out that this rule only establishes a performance standard and is not guidance or a mandate for RSD usage. EPA believes that it would be unwise for states to require emission related repairs based solely on an RSD reading. Indeed, EPA believes that states are aware of this and will perform confirmatory emission re-tests using proven methods on vehicles that fail RSD in order to avoid useless repairs.

H. OBD tests

1. Summary of Rule

Among other requirements, the OTR low enhanced performance standard requires a start date of January 1, 1999 and OBD tests on all 1996 and newer vehicles.

2. Summary of Comments

One state commented that it was reluctant to require repairs based solely on OBD test failure in 1999 because of the relative newness of OBD technology. The state commented that it preferred to wait and not require repairs based on OBD test failure until there is more data available on OBD's effectiveness at correctly identifying emission component failures.

3. Response to Comments

EPA proposed an OBD rule in the Federal Register on August 18, 1995 (60 FR 43092). Currently, EPA is finalizing the OBD rule which is expected to be published in the Summer of 1996. In the OBD rule, EPA will address the concerns of this and several other comments about the novelty of OBD and the need for a phase-in period prior to requiring repairs.

I. Other Comments

EPA received several other comments which dealt with I/M issues that were not specific to this rulemaking. EPA responded to these unrelated comments in a response document which it placed in the docket.

V. Economic Costs and Benefits

Today's revisions provide states additional flexibility that lessens rather than increases the potential burden on states. Furthermore, states are under no obligation, legal or otherwise, to modify existing plans meeting the previously applicable requirements as a result of today's action.

VI. Administrative Requirements

A. Administrative Designation

It has been determined that this amendment to the I/M rule is not a significant regulatory action under the terms of Executive Order 12866 and has been waived from OMB review. Any impacts associated with these revisions do not constitute additional burdens when compared to the existing I/M requirements published in the Federal Register on November 5, 1992 (57 FR 52950) as amended. Nor do today's amendments create an annual effect on the economy of $100 million or more or otherwise adversely affect the economy or the environment. It is not inconsistent with, nor does it interfere with, actions by other agencies. It does not alter budgetary impacts of entitlements or other programs, and it does not raise any new or unusual legal or policy issues.

B. Reporting and Recordkeeping Requirement

There are no information requirements in this supplemental final rule which require the approval of the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities and, therefore, is not subject to the requirement of a Regulatory Impact Analysis. A small entity may include a small government entity or jurisdiction. A small government jurisdiction is defined as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' This certification is based on the fact that the I/M areas

impacted by this rulemaking do not meet the definition of a small government jurisdiction, that is, ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' Furthermore, the impact created by this action does not increase the pre-existing burden which this proposal seeks to amend.

D. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

To the extent that the rules in this action would impose any mandate at all as defined in Section 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this rule is not estimated to impose costs in excess of $100 million. Therefore, EPA has not prepared a statement with respect to budgetary impacts. As noted above, this rule offers opportunities to states that would enable them to lower economic burdens from those resulting from the currently existing I/M rule.

E. Small Business Regulatory Enforcement Fairness Act

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Transportation.

Dated: July 16, 1960.

Fred Hansen,

Acting Administrator.

For the reasons set out in the preamble, part 51 of title 40 of the Code of Federal Regulations is amended to read as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 740l–7671q.

2. Section 51.350 is amended by revising paragraph (b)(1) and by adding paragraph (b)(5) to read as follows:

§ 51.350 Applicability.

* * * * *

(b) * * * (1) In an ozone transport region, the program shall cover all counties within subject MSAs or subject portions of MSAs, as defined by OMB in 1990, except largely rural counties having a population density of less than 200 persons per square mile based on the 1990 Census and counties with less than 1% of the population in the MSA may be excluded provided that at least 50% of the MSA population is included in the program. This provision does not preclude the voluntary inclusion of portions of an excluded county. Non-urbanized islands not connected to the mainland by roads, bridges, or tunnels may be excluded without regard to population.

* * * * *

(5) Notwithstanding the limitation in paragraph (b)(3) of this section, in an ozone transport region, states which opt for a program which meets the performance standard described in § 51.351(h) and claim in their SIP less emission reduction credit than the basic performance standard for one or more pollutants, may apply a geographic bubble covering areas in the state not otherwise subject to an I/M requirement to achieve emission reductions from other measures equal to or greater than what would have been achieved if the low enhanced performance standard were met in the subject I/M areas. Emissions reductions from non-I/M measures shall not be counted towards the OTR low enhanced performance standard.

* * * * *

3. Section 51.351 is amended by adding paragraph (h) to read as follows:

§ 51.351 Enhanced I/M performance standards.

* * * * *

(h) *Ozone Transport Region Low-Enhanced Performance Standard.* An attainment area, marginal ozone area, or moderate ozone area with a 1980 Census population of less than 200,000 in the urbanized area, in an ozone transport region, that is required to implement enhanced I/M under section 184(b)(1)(A) of the Clean Air Act, but was not previously required to or did not in fact implement basic I/M under the Clean Air Act as enacted prior to 1990 and is not subject to the requirements for basic I/M programs in this subpart, may select the performance standard described below in lieu of the standard described in paragraph (f) or (g) of this section as long as the difference in emission reductions between the program described in paragraph (g) and this paragraph are made up with other measures, as provided in § 51.350(b)(5). Offsetting measures shall not include those otherwise required by the Clean Air Act in the areas from which credit is bubbled. The program elements for this alternate OTR enhanced I/M performance standard are:

(1) *Network type.* Centralized testing.

(2) *Start date.* January 1, 1999.

(3) *Test frequency.* Annual testing.

(4) *Model year coverage.* Testing of 1968 and newer vehicles.

(5) *Vehicle type coverage.* Light duty vehicles, and light duty trucks, rated up to 8,500 pounds GVWR.

(6) *Exhaust emission test type.* Remote sensing measurements on 1968–1995 vehicles; on-board diagnostic system checks on 1996 and newer vehicles.

(7) *Emission standards.* For remote sensing measurements, a carbon monoxide standard of 7.5% (with at least two separate readings above this level to establish a failure).

(8) *Emission control device inspections.* Visual inspection of the catalytic converter on 1975 and newer vehicles and visual inspection of the positive crankcase ventilation valve on 1968–1974 vehicles.

(9) *Waiver rate.* A 3% waiver rate, as a percentage of failed vehicles.

(10) *Compliance rate.* A 96% compliance rate.

(11) *Evaluation dates.* Enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower VOC and NO_X emission levels as the model program described in this paragraph by January 1, 2000, 2003, 2006, and 2007. Equality of substituted emission reductions to the benefits of the low enhanced performance standard must be demonstrated for the same evaluation dates.

4. Section 51.353 is amended by adding paragraph (c)(5) to read as follows:

§ 51.353 Network type and program evaluation.

* * * * *

(c) * * *

(5) Areas that qualify for and choose to implement an OTR low enhanced I/M program, as established in § 51.351(h), and that claim in their SIP less emission reduction credit than the basic performance standard for one or more pollutants, are exempt from the requirements of paragraphs (c)(1) through (c)(4) of this section. The reports required under § 51.366 of this part shall be sufficient in these areas to satisfy the requirements of Clean Air Act for program reporting.

* * * * *

5. Section 51.364 is amended by adding paragraphs (e) and (f) to read as follows:

§ 51.364 Enforcement against contractors, stations and inspectors.

* * * * *

(e) Alternative quality assurance procedures or frequencies that achieve equivalent or better results may be approved by the Administrator. Statistical process control shall be used whenever possible to demonstrate the efficacy of alternatives.

(f) Areas that qualify for and choose to implement an OTR low enhanced I/M program, as established in § 51.351(h), and that claim in their SIP less emission reduction credit than the basic performance standard for one or more pollutants, are not required to meet the oversight specifications of this section.

6. Section 51.373 is amended by adding paragraph (f) to read as follows:

§ 51.373 Implementation deadlines.

* * * * *

(f) Areas that choose to implement an enhanced I/M program only meeting the requirements of § 51.351(h) shall fully implement the program no later than July 1, 1999. The availability and use of this late start date does not relieve the area of the obligation to meet the requirements of § 51.351(h)(11) by the end of 1999.

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